IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 2ND AUGUST 2007 / 11TH SRAVANA 1929

WP(C).No. 16137 of 2006(U)

AGAINST THE ORDER DT.15.6.06 IN OS.281/1997 of
MUNSIFF'S COURT, TIRUR
.....

PETITIONERS:

GRACE PADMINI, D/O.MARK JOHN,
TIRUR TALUK, THRIPRANGODU AMSOM DESOM,
MALAPPURAM DISTRICT.

BY ADV. SRI.T.KRISHNAN UNNI

RESPONDENTS:
---

1. DAFFINA MOHAN, W/O.LATE MOHAN JOHNSON,
TIRUR TALUK, THIRUNAVAYA AMSOM,
KARATHOOR DESOM, MALAPPURAM.

2. SHALIMOL MOHAN, D/O. LATE MOHAN JOHNSON,
TIRUR TALUK, TIRUNAVAYA AMSOM,
KARATHOOR DESOM, MALAPPURAM.

3. SHANIMOL MOHAN,
D/O.LATE MOHAN JOHNSON,
TIRUR TALUK, TIRUNAVAYA AMSOM,
KARATHOOR DESOM, MALAPPURAM.

4. LALITHABHAI, D/O.VINCENT JOHN,
TIRUR TALUK, THRIPRANGODU AMSOM DESOM,
MALAPPURAM DISTRICT.

5. SOBHANA MARGARETTE, D/O.VINCENT JOHN,
TIRUR TALUK, THRIPRANGODU AMSOM DESOM,
MALAPPURAM DISTRICT.

*6. GLADIS HYMAVATHY, D/O.VINSTON JOHN,
TIRUR TALUK, THRIPRANGODU AMSOM DESOM,
MALAPPURAM DISTRICT.

*7. GRACE EVANCHALINE, D/O.VINSTON JOHN,
TIRUR TALUK, THRIPRANGODU AMSOM DESOM,
MALAPPURAM DISTRICT.

8. KAROL JOHN, W/O.VINSTON JOHN,
TIRUR TALUK, THRIPRANGODU AMSOM DESOM,
MALAPPURAM DISTRICT.

9. SHERLY MARGERETTE JOHN,
D/O.JOHNSON JOHN, TIRUNAVAYA AMSOM,
KARATHUR DESOM, MALAPPURAM DISTRICT.

10. ROSILI JOHNSON, W/O.JOHNSON JOHN,
TIRUNAVAYA AMSOM, KARATHUR DESOM,
MALAPPURAM DISTRICT.

*11. LASALY MOHAN, S/O.LORENCE JOHN,
C.B.I.PALAGHAT, RESIDING AT PALAKKAD TALUK,
MACHINE COMPOUND, PALAGHAT.

*12. HUMAN JAYADAS LORENCE,
S/O.LORENCE JOHN, RESIDING AT PALAKKAD TALUK,
MACHINE COMPOUND, PALAGHAT.

*13. PRABHA LORENCE, D/O.LORENCE JOHN,
RESIDING AT PALAKKAD TALUK,
MACHINE COMPOUND, PALAGHAT.

*14. SHEELA SMRILALNI LORENCE,
D/O.LORENCE JOHN, RESIDING AT PALAKKAD TALUK,
MACHINE COMPOUND, PALAGHAT.

*15. HELEN SULALINI LORENCE,
D/O.LORENCE JOHN, RESIDING AT PALAKKAD TALUK,
MACHINE COMPOUND, PALAGHAT.

*16. EDA LORENCE, W/O.LORENCE JOHN,
RESIDING AT PALAKKAD TALUK,
MACHINE COMPOUND, PALAGHAT.

17. EDASSERY YAHUTTY, S/O.AHAMMEDKUTTY,
RESIDING AT TIRUR TALUK,
THRIPRANGODU AMSOM DESOM,
MALAPPURAM DISTRICT.

18. MARYEVELINE, D/O.JOSEPH (KUNNAMKODI),
RESIDING AT TIRUR TALUK,
THRIPRANGODU AMSOM DESOM, MALAPPURAM DISTRICT.

19. LETEESHIA EDWARD, PARAPPERI,
THRIPRANGODU AMSOM DESOM,
MALAPPURAM DISTRICT.

20. S.C.JOHN, S/O.LATEESHIA EDWARD,
KALPETTA, WAYANAD.

21. SISTER JANET AJITHA,
PAROPPADI, MERIKUNNU,
WAYANAD.

22. P.J.JAISON, PARAPPERI,
THRIPRANGODU AMSOM DESOM,
MALAPPURAM DISTRICT.

23. NELSON.J.J, PARAPPERI,
THRIPRANGODU AMSOM DESOM,
MALAPPURAM DISTRICT.

24. ROYSON.J.J, PARAPPERI,
THRIPRANGODU AMSOM DESOM,
MALAPPURAM DISTRICT.

*25. ANTONY @ SALEEM,
TIRUNAVAYA AMSOM, KARATHUR DESOM,
MALAPPURAM DISTRICT.

26. RAMYA, TIRUNAVAYA AMSOM,
KARATHUR DESOM, MALAPPURAM DISTRICT.

27. RAMITHA, (MINOR),
REP. BY GUARDIAN FATHER
ANTONY @ SALEEM (R25),
TIRUNAVAYA AMSOM, KARATHUR DESOM,
MALAPPURAM DISTRICT.

*28. TIRUNAVAYA AMSOM,
KARATHUR DESOM, MALAPPURAM DISTRICT.

*29. ARCHPAUL SUNDARARAJ (RAJU),
S/O.LORENCE JOHN, ROBINSON CHURCH,
ROBINSON ROAD, PALAGHAT DISTRICT.

30. FATHIMA, D/O.MULANTHALA MAMMI,
TIRUR TALUK, THRIPRANGODU AMSOM DESOM,
MALAPPURAM DISTRICT.

*RESPONDENTS 6, 7, 11, 12, 13, 14, 15, 16, 25, 28 AND 29 ARE DELETED FROM THE PARTY ARRAY AS PER ORDER DT.14.7.06 IN I.A.9440/06

R1 TO R3 BY ADV. SRI.P.CHANDRASEKHAR
R4 & R5 BY ADV.SRI.C.M.MOHAMMED IQUABAL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 02/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.16137/06

APPENDIX

PETITIONER'S EXTS:

EXT.P1 – TRUE COPY OF ORDER OF MUNSIFF, TIRUR IN O.S.281/97 DT.15.6.06.

/TRUE COPY/

PIUS C. KURIAKOSE, J.

.....

W.P.(C)No.16137 OF 2006

.....

DATED THIS THE 2ND AUGUST, 2007

J U D G M E N T

The 2nd defendant in a suit for partition O.S.No.281 of 1997 on the files of the Munsiff's Court, Tirur is aggrieved by Ext.P1 order passed by the learned Munsiff, upholding the objection raised by the plaintiffs against the marking of an unregistered gift deed dated 25.6.1971 by which the original owner of the property in question had transferred the property in favour of his son Winson John who is the predecessor-in-interest of the contesting defendants. Under the impugned order, the learned Munsiff, relying on the judgment of this Court in **M.K.Isha Beevi v. E.Shahul Hameed** (1993 (2) KLT 631), held that the unregistered document sought to be put in evidence shall not avail to create, declare, assign, limit or extinguish in or to the immovable property comprised in the document. The learned Munsiff would repel the argument advanced on behalf of the petitioner that for proving a collateral transaction not required to be made by registered document, the document should be permitted to be marked, by referring to the judgment in **Kuriakose v. Mariam** (1962 KLT 792).

Various judgments which were cited on behalf of the petitioner regarding the scope of the proviso to Section 49(c) of the Registration Act, 1908 were distinguished by the learned Munsiff on the reason that all those decisions relate to compulsorily registrable lease deeds unlike the decision in **Kuriakose v. Mariam** (supra) which deals with an unregistered gift deed.

2. I have heard the submissions of Adv.Sri.T.Krishnanunni on behalf of the petitioner and those of Sri.P.Chandrasekhar, counsel for the contesting respondents.

3. Mr.Krishnanunni submitted that the scope of the proviso to Section 49(c) of the Registration Act was not properly understood by the learned Munsiff, resulting in prejudice to the writ petitioner. Marking of the document should have been permitted at least for the collateral purpose of proving possession of the property and the nature and character of possession. Plea of adverse possession and ouster had been alternatively set up by the petitioner and the nature and character of possession and the longevity of possession de hors title was relevant. Under the impugned order, the learned Munsiff has virtually decreed the suit repelling all the contentions of the writ petitioner, complained Mr.Krishnanunni.

4. Placing strong reliance on the judgment of the Madhya Pradesh High Court in **Beni Madhavprasad v. Rasklal** (AIR 1959 Madhya Pradesh 23), Mr.Chandrasekhar would argue that an unregistered document cannot be permitted to be marked, if the object is to substantiate the defence of adverse possession. The learned counsel would distinguish the judgments cited on behalf of the petitioner in the context of the proviso to Section 49(c) of the Registration Act stating that those were all decisions dealing with unregistered lease deeds unlike the judgment of the Madhya Pradesh High Court cited by him and the judgment of the Kerala High Court reported in **Kuriakose v. Mariam** (supra) which were both relating to unregistered gift deeds and submit that the learned Munsiff was right in refusing to mark the document.

5. Having considered the rival submissions addressed at the Bar in the light of the ratio emerging from the precedents cited at the Bar and other precedents governing the issue, I am of the view that the learned Munsiff was not justified in distinguishing between judicial precedents dealing with unregistered gift deeds and unregistered lease deeds. The crucial question is, to what extent a compulsorily

registrable document which is not registered can be received as evidence. As pointed out by the Supreme Court in **Anthony v. K.C.Ittoop & Sons** [(2000) 6 SCC 394)], the interdicts against reception of unregistered documents are provided by Section 17 of the Registration Act which insists that gift deed shall be registered and Section 49 of the same Act which provides that a document which is required by Section 17 or by any provision of the Transfer of Property Act to be registered shall not

> "a) affect any immovable property comprised therein, or
>
> b) confer any power to adopt, or
>
> c) be received as evidence of any transaction affecting such property or conferring such power,
>
> unless it has been registered".

But, at the same time, the proviso to Section 49 reading as follows shall not go unnoticed:-

> "Provided that an unregistered document affecting immovable property and required by this Act, or the Transfer of Property Act, 1882 to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877, or as evidence of part-performance of a contract for the purposes of Section 53-A of the

> Transfer of Property Act, 1882, or as evidence of any collateral transaction not required to be effected by registered document."

6. What are collateral transactions or purposes which can be proved through unregistered documents have been subject matter of many a judicial precedent. **Satish Chand Makhan v. Govardhan Das Byas** [(1984) 1 SCC 369) is one of them. Their Lordships held that except for the collateral purpose of proving the nature and character of possession of the party claiming under the unregistered lease deed, the document will be inadmissible. In **Paul v. Saleena** (2004 (1) KLT 924), a Division Bench of this Court to which I was also a party, considered the admissibility of unregistered documents in the context of the proviso to Section 49 of the Registration Act. After referring to the decisions of various High Courts and that of the Supreme Court in **Rai Chand Jain v. Miss Chandra Kanta Khosla** (AIR 1991 SC 743), it was held that an unregistered lease deed can be looked into for collateral purposes of nature and possession of the property and even purpose of lease. The Calcutta High Court in **Pieco Electronics & Electricals Ltd. v. Smt.Tribeni Deve** (AIR 1990 Calcutta 135) held that an unregistered lease deed could be looked into for ascertaining commencement of possession, rate of rent and

other similar matters which are collateral to the principal transaction.

7. Thus, it can be found that the unregistered gift deed put in evidence in this case may be receivable in evidence for proving collateral purposes, i.e., for proving collateral transactions. The view of the Madhya Pradesh High Court that an unregistered gift deed cannot be received for the purposes of proving the possession claimed by a party as donee may be correct. But Mr.Krishnanunni's argument is that the alternative contention of his client is that even de hors the status as a donee, his client has prescribed a hostile title by adverse possession against the contesting respondents. According to him, possession which is claimed by the petitioner is not possession as owner on the strength of the gift deed. It is adverse possession which is raised in the alternative as possession in open denial of plaintiffs' title. Thus, the nature of possession, whether the same was as a co-owner along with the plaintiffs or was in open denial of the previous owner's title after execution of the controversial document and in denial of the ostensible co-ownership which the legal heirs of the previous owner came to have upon his demise will all be relevant questions. I do not propose to decide whether and to what extent the unregistered document can be received as evidence. Mere marking

of the document will not amount to reception of document as evidence. According to me the learned Munsiff was not justified in concluding at that stage that the document in question is totally valueless and cannot be relied on for any purpose whatsoever. The learned Munsiff will mark the document and consider the evidentiary value of the document, i.e., to what extent it can be used for the purposes of substantiating the defence contention, at the time when he finally appreciates the evidence which comes on record in the suit. Marking, in my opinion, cannot be declined since the same is necessary for the trial court as well as the courts of appeal which may come to consider this case, to refer to the document in their respective judgments.

8. The result is that I set aside the impugned order and permit marking of the document in evidence. It is made clear that the question whether the document can be received as evidence of any transaction whatsoever will be decided later in the light of the judicial precedents which may be cited before the learned Munsiff after the entire evidence has come on record. However, since it is seen that a suit for partition filed wayback in 1997 has not been disposed of yet, I direct the learned Munsiff to expedite trial and see that the suit is

disposed of at the earliest and at any rate within two months of receiving copy of this judgment.

The Writ Petition is allowed as above.

(PIUS C.KURIAKOSE, JUDGE)

tgl